

Local Bankruptcy Rules: Kentucky (W.D. Ky.)

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A Practice Note summarizing selected local rules of the US Bankruptcy Court for the Western District of Kentucky (W.D. Ky.).

Automatic Stay

Background/Federal Requirements

An automatic stay:

- Is triggered immediately on filing of the bankruptcy petition.
- Automatically stops substantially all acts and proceedings against the debtor and its property.
- Is a nationwide injunction barring almost all actions against the debtor and its property, including the exercise of remedies regarding collateral, enforcement of prepetition judgments, litigation, collection efforts, and acts to create, perfect, and enforce liens granted before the petition date.
- Generally applies only to prepetition events and does not, for instance, bar suit against a debtor based on a cause of action arising postpetition. The stay's broad scope applies to all creditors, whether secured or unsecured, and to all of the debtor's property, wherever located.
- Forbids creditors from pursuing both formal and informal actions and remedies against the debtor and its property. It also covers remedies that could be exercised outside the US.

For more information about the stay, see [Practice Note, Automatic Stay: Overview](#).

Local Rules

W.D. Ky. Local Bankruptcy Court Rule 4001-1(a) requires any motion for relief from the automatic stay to be filed with a copy of the proof of claim. Local practice does permit the filed proof of claim to be referenced in the motion to satisfy this requirement, but counsel should

include the proof of claim. The motion must also specify whether the movant seeks to terminate, annul, modify, or condition the stay.

Bankruptcy Appeals

There are no local bankruptcy court rules relating to appeals in the W.D. Ky. Movants should follow the procedures in Federal Rules of Bankruptcy Procedure 8001 to 8028.

Procedural Rules Applicable to Bankruptcy Appeals

Section 158 of the Judicial Code (28 U.S.C. § 158) generally governs bankruptcy appeals, but counsel must also review:

- The [Federal Rules of Bankruptcy Procedure](#).
- The [Federal Rules of Appellate Procedure](#).
- The [Official Bankruptcy Forms](#).
- The [E.D./W.D. Ky. Local Civil Rules and General Orders](#).
- The [W.D. Ky. Local Bankruptcy Court Rules and General Orders](#).
- The [Bankr. W.D. Ky. Administrative Procedures Manual](#).
- The [Rules of the US Court of Appeals for the Sixth Circuit](#).
- The [Rules of the Bankruptcy Appellate Panel \(BAP\) for the Sixth Circuit](#).
- The [judicial preferences of the assigned judge](#).

Consider whether the bankruptcy order is final or interlocutory (see [Bankruptcy Appeals Checklist: Final Versus Interlocutory Orders](#) and [Practice Note, Appealing a Bankruptcy Court Order: Overview: Appeals](#)).

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“As of Right” Versus Appeals “By Permission”). If it is interlocutory, review Federal Rule of Bankruptcy Procedure 8004 on motions for leave to appeal an interlocutory order (see [Bankruptcy Appeals Checklist: Permission for Interlocutory Appeals](#)).

For more information on:

- Timing on filing the notice of appeal, review Federal Rule of Bankruptcy Procedure 8002 (see [Bankruptcy Appeals Checklist: Timing Issues](#)).
- Instructions on filing and the contents of the notice of appeal, review Federal Rule of Bankruptcy Procedure 8003 and Official Bankruptcy Form B417A (see Notice of Appeal).
- The effect of appeal on bankruptcy jurisdiction, see [Bankruptcy Appeals Checklist: Effect of Appeal on Bankruptcy Jurisdiction](#).
- Extending the time to file a notice of appeal, review Federal Rule of Bankruptcy Procedure 8002(d)(2) (see [Bankruptcy Appeals Checklist: Extension of Time to File Notice of Appeal](#)).
- Disputes relating to the record on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see [Bankruptcy Appeals Checklist: Correcting or Modifying the Record](#)).
- Appeals related to pending filed cases, provide the information required on the civil cover sheet (see [W.D. Ky.: Civil Cover Sheet](#)).
- Filing fees, see Docket Fee.
- Docketing of appeal in the district court, review Federal Rule of Bankruptcy Procedure 8003(d) (see [Bankruptcy Appeals Checklist: Docketing of Appeal in the District Court or BAP](#)).
- Obtaining a stay of a bankruptcy court order or judgment pending appeal, review Federal Rule of Bankruptcy Procedure 8007 (see Sixth Circuit’s Four-Part Test for Stays Pending Appeal and [Bankruptcy Appeals Checklist: Stay Pending Appeal](#)).
- Designating the record on appeal and the statement of the issues on appeal, review Federal Rule of Bankruptcy Procedure 8009 (see [Bankruptcy Appeals Checklist: Designation of the Record and Statement of Issues and Record on Appeal](#)).
- Designating sealed documents, review Federal Rule of Bankruptcy Procedure 8009(f) (see [Bankruptcy Appeals Checklist: Sealed Documents](#)).
- The duties of the parties to provide a transcript, review Federal Rule of Bankruptcy Procedure 8009(b) (see

[Bankr. W.D. Ky.: Transcripts and Audio Recordings and Bankruptcy Appeals Checklist: Transcripts](#)).

- Certifying an appeal directly to the Sixth Circuit, review 28 U.S.C. Section 158, Federal Rule of Bankruptcy Procedure 8006, and Official Bankruptcy Form B424 (see [Bankruptcy Appeals Checklist: Direct Appeals to the Circuit Court of Appeals and Practice Note, Appealing a Bankruptcy Court Order: Overview: Appealing a Bankruptcy Court Order Directly to the Court of Appeals in Limited Circumstances](#)).
- Alternatives to an appeal, including motions for amended or new findings or to seek relief from a bankruptcy court order or judgment, review Federal Rules of Bankruptcy Procedure 7052, 9023, and 9024 (see [Alternatives to Appeal](#)).
- Notice to the bankruptcy court of preliminary appellate motions, review Federal Rule of Bankruptcy Procedure 8010(c) (see [Bankruptcy Appeals Checklist: Notice to Bankruptcy Court of Preliminary Appellate Motions](#)).
- District court review of a judgment the bankruptcy court lacked constitutional authority to enter, review Federal Rule of Bankruptcy Procedure 8018.1 (see [Bankruptcy Appeals Checklist: Challenges to Bankruptcy Court Authority](#)).
- Page or word limitations and other rules relating to appellate briefs, review Federal Rules of Bankruptcy Procedure 8013, 8014, 8015, 8016, and 8017 and Official Bankruptcy Form B417C (see [Bankruptcy Appeals Checklist: Other Appeal Responsibilities](#)). See also the policies and procedures of the assigned judge regarding page limitations, courtesy copies, and other requirements.

For more information on bankruptcy appeals generally, see [Practice Note, Appealing a Bankruptcy Court Order: Overview](#) and [Bankruptcy Appeals Checklist](#).

Notice of Appeal

Regardless of whether a bankruptcy court order is final or interlocutory, a party seeking to appeal must file a notice of appeal that substantially conforms to Official Bankruptcy Form B417A, attaching a copy of the order, judgment, or decree (Fed. R. Bankr. P. 8003(a)(3)). The notice of appeal must be electronically filed in the bankruptcy court from which the appeal is taken.

The appellant must also:

- Include in the notice of appeal the names of all parties to the order, judgment, or decree appealed from and the names, addresses, and telephone numbers of their respective attorneys, if any.

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- Pay the docket fee when the notice of appeal is filed (see [Bankr. W.D. Ky.: Filing Fees for Appeals and Cross Appeals](#)).
- Complete the civil cover sheet (see [W.D. Ky.: Civil Cover Sheet](#)).

Docket Fee

The filing fee for a notice of appeal can be found on the bankruptcy court's website (see [Bankr. W.D. Ky.: Filings Fees for Appeals and Cross Appeals](#)). The fee may be paid in person or by mail and may be made with a cashier's check, certified check, money order, or business check. No personal checks, third-party checks, or other negotiable instruments are accepted.

An appellant that cannot afford to pay the fee may apply to the district court for in forma pauperis (IFP) status (see [US Courts: Fee Waiver Application Forms](#)).

Sixth Circuit's Four-Part Test for Stays Pending Appeal

The Sixth Circuit follows an established four-part test for determining whether to grant a stay pending appeal. The test considers whether:

- The appellant has made a showing of a likelihood of success on the merits.
- The appellant is likely to suffer irreparable injury absent a stay.
- A stay is likely to substantially harm other parties with an interest in the litigation.
- A stay is in the public interest.

(See *Serv. Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012).)

Alternatives to Appeal

There are alternatives that parties may wish to exhaust before filing an appeal, such as filing a motion to reconsider or reargue with the bankruptcy court. Federal Rule of Civil Procedure 59, made applicable to bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 9023, permits a party to make a motion to alter or amend a judgment. Federal Rule of Bankruptcy Procedure 9024 permits a party to move for reconsideration.

The Sixth Circuit has held that the major grounds justifying reconsideration are:

- An intervening change in controlling law.
- The availability of new evidence.

- The need to correct clear error of law or prevent manifest injustice.

(See *Clark v. United States*, 764 F.3d 653, 661 (6th Cir. 2014).)

Parties considering these devices should review Federal Rules of Bankruptcy Procedure 9023 and 9024. A party may also file a motion seeking new or amended findings with the bankruptcy court within 14 days of its entry (Fed. R. Bankr. P. 7052).

Parties should review Federal Rule of Bankruptcy Procedure 8002(b) related to the timing for filing a notice of appeal (see [Practice Note, Appealing a Bankruptcy Court Order: Overview: Later Motions May Extend the Time to Appeal](#)).

Appeals to the BAP

The W.D. Ky. District Court has entered [Amended General Order 2016-05](#), which authorizes the BAP to hear appeals originating in the W.D. Ky. Bankruptcy Court.

Bankruptcy Exemptions

Background/Federal Requirements

An individual debtor is entitled to claim certain property as exempt from the bankruptcy estate, which means the property cannot be used to satisfy claims against the estate. Bankruptcy exemptions do not operate automatically, and all property remains property of the estate until the debtor claims it exempt and the objection period expires. A properly claimed exemption will immunize exempt property from seizure or attachment for satisfaction of debts incurred before the debtor's bankruptcy proceeding. Bankruptcy exemptions are intended to ensure that a debtor can emerge from bankruptcy with enough possessions to make a fresh start.

Under section 522(b) of the Bankruptcy Code, an individual debtor can choose which exemption system is most favorable for the debtor's circumstances. The debtor can use exemptions granted either:

- Under the federal Bankruptcy Code.
- By the state of the debtor's domicile, with exemptions provided under other federal laws.

The debtor cannot choose exemptions from both the federal Bankruptcy Code and the state law scheme. The debtor must choose one or the other.

For more information on bankruptcy exemptions, see [Practice Note, Bankruptcy Exemptions for Individual Debtors: Overview](#).

Bankruptcy Rule 4003(a)

The debtor must list all exempt property on Schedule C: The Property You Claim as Exempt (Individuals) (Official Bankruptcy Form B106C). If the debtor fails to timely file a list of exemptions, a dependent of the debtor may file the list within 30 days after the expiration of the time allowed by Federal Rule of Bankruptcy Procedure 1007 (Fed. R. Bankr. P. 4003(a)).

Bankruptcy Rule 4003(b)

A party in interest may object to an exemption claim:

- Within 30 days of the conclusion of the section 341 meeting of creditors.
- If the debtor amends or supplements the list of exemptions, within 30 days of that amendment or supplement.

An extension of time to object to an exemption claim may be granted for cause only if the extension is requested before the expiration of the time to object (Fed. R. Bankr. P. 4003(b)(1)).

The trustee can object to an exemption on the basis that the claim was fraudulent for up to one year after the closing of the case (Fed. R. Bankr. P. 4003(b)(2)).

An objection based on the state homestead exemption under section 522(q) of the Bankruptcy Code must be filed before the closing of the case (Fed. R. Bankr. P. 4003(b)(3)).

Copies of any objection are given to:

- The trustee.
- The debtor.
- The debtor's attorney.
- The person filing the list of exemptions and that person's attorney.

(Fed. R. Bankr. P. 4003(b)(4).)

Bankruptcy Rule 4003(c)

It is the objecting party's initial burden to demonstrate that the exemption is not valid (Fed. R. Bankr. P. 4003(c)).

Bankruptcy Rule 4003(d)

To avoid a lien under section 522(f) of the Bankruptcy Code, the debtor must commence a contested matter, governed by Federal Rule of Bankruptcy Procedure 9014, or serve a Chapter 12 or Chapter 13 plan on an affected creditor in the manner of service of a summons and complaint provided by Federal Rule of Bankruptcy Procedure 1004 (Fed. R. Bankr. P. 4003(d)).

Local Rules

Exemptions granted by the state of Kentucky can be found at KRS 67A.350, 67A.620, 95.878, 161.700, 205.220, 304.39-260, 304.14-310 to 304.14-330, 341.470, 342.180, 362.270, and 427.010 to 427.990.

Cash Collateral

Background/Federal Requirements

The bankruptcy court, after notice and a hearing, may approve a debtor's request for use of cash collateral (§ 363(a), (c)(2), Bankruptcy Code). A debtor-in-possession or trustee seeking permission to use cash collateral must comply with:

- Section 363 of the Bankruptcy Code (see Section 363(c) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(b) (see Bankruptcy Rule 4001(b)).
- Any applicable local bankruptcy court rules (see Cash Collateral: Local Rules).

This Note assumes that the prepetition lender is not providing DIP financing and, therefore, does not discuss any provisions that normally apply when the prepetition lender is the DIP lender.

For more information on the use of cash collateral in bankruptcy, see [Practice Note, Cash Collateral: Overview](#).

Section 363(c) of the Bankruptcy Code

A debtor-in-possession can continue to use noncash property that has been pledged as collateral in the ordinary course, such as equipment, inventory, or other tangible assets, without needing to obtain permission from the bankruptcy court (§ 363(c)(1), Bankruptcy Code). However, a debtor-in-possession that seeks to use its lender's cash collateral must obtain either:

- The consent of all lenders holding security interests in the cash collateral.
- An order from the bankruptcy court permitting use of cash collateral, usually based on a showing that the secured creditor is adequately protected (see [Practice Note, Cash Collateral: Overview: Adequate Protection](#)).

(§ 363(c)(2), Bankruptcy Code.)

The limitations on the use of cash collateral, such as lender consent or bankruptcy court approval, help ensure that the secured lender's interest in cash collateral is

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adequately protected and that the lender is afforded due process.

To use cash collateral, the following requirements must be satisfied:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest and that the court can hold a hearing, to the extent one is necessary (§ 363(c)(2), (3), Bankruptcy Code). The court may hold an interim cash collateral hearing on the first day of the case to avoid immediate and irreparable harm to the debtor but cannot hold a final hearing earlier than 14 days from the date the cash collateral motion is filed (Fed. R. Bankr. P. 4001(b)(2); see *In re Dynaco Corp.*, 158 B.R. 552 (Bankr. D. N.H. 1993); *In re Post-Tron Sys. Corp.*, 106 B.R. 345, 346 (Bankr. D. R.I. 1989)).
- **Adequate protection.** On request of a party with an interest in the debtor's cash collateral, the debtor must show that such party's interest is adequately protected from any diminution in the value of its collateral caused by using cash collateral (§ 363(e), Bankruptcy Code). The adequate protection provided depends on the circumstances of the case (see [Practice Notes, Cash Collateral: Overview: Adequate Protection and Adequate Protection: Overview](#)).

Though not required, a debtor may choose to submit a written declaration from a business person or a financial advisor to the debtor in support of the debtor's need to use its lender's cash collateral (see [Standard Document, Declaration: General \(Federal\)](#)). It is common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (which may be the declarant), and a lender representative to attend the cash collateral hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed use of cash collateral.

Bankruptcy Rule 4001(b)

A request to use cash collateral in any jurisdiction must comply with Bankruptcy Rule 4001(b), which contains requirements regarding:

- The contents of a cash collateral motion (see Contents of the Cash Collateral Motion).
- Service of the cash collateral motion (see Service of the Cash Collateral Motion).
- Notice and hearing on the cash collateral motion (see Notice and Hearing on the Cash Collateral Motion).

Contents of the Cash Collateral Motion

In all jurisdictions, a cash collateral motion must be:

- Brought as a contested matter under Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).

- Accompanied by a proposed form of order.

(Fed. R. Bankr. P. 4001(b)(1)(A).)

The cash collateral motion must include a concise statement of the relief requested that summarizes and identifies the location within the relevant documents of all the material provisions of the proposed cash collateral agreement and form of order, including:

- The name of each secured lender with an interest in the cash collateral.
- The purposes for using the cash collateral.
- The material terms of the agreement, including the duration of the debtor's use of cash collateral.
- Any liens, cash payments, or adequate protection that the secured lender is to receive or an explanation of why each secured creditor's interest is adequately protected.

(Fed. R. Bankr. P. 4001(b)(1)(B).)

Service of the Cash Collateral Motion

The cash collateral motion must be served on:

- Any entity with an interest in the cash collateral.
- Any committee or its authorized agent formed under:
 - section 705 of the Bankruptcy Code in a Chapter 7 case; or
 - section 1102 of the Bankruptcy Code in a Chapter 11 case (see [Practice Notes, Chapter 11 Creditors' Committees](#) and [Chapter 11 Equity Committees](#)).
- The top 20 unsecured creditors identified on the list filed under Federal Rule of Bankruptcy Procedure 1007(d) if the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed (see [Standard Document, List of Largest Unsecured Creditors](#)).
- Any other entity that the court may direct.

(Fed. R. Bankr. P. 4001(b)(1)(C).)

A cash collateral motion is a contested matter for which a motion must be made under Federal Rule of Bankruptcy Procedure 9014 (Fed. R. Bankr. P. 4001(b)(1)(A)). Under Bankruptcy Rule 9014, the debtor must serve the motion in the same manner provided for service of a summons and complaint under Federal Rule of Bankruptcy Procedure 7004.

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The debtor need not submit a written declaration in support of its cash collateral motion, but may choose to do so if the circumstances of the case and the need for use of cash collateral warrant further support. If the motion is supported by an affidavit or declaration, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless otherwise permitted by the court (Fed. R. Bankr. P. 9006(d); see Section 363(c) of the Bankruptcy Code).

Notice and Hearing on the Cash Collateral Motion

The court may hold an interim hearing to authorize the immediate access to cash collateral to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the cash collateral motion (Fed. R. Bankr. P. 4001(b)(2)).

The debtor must give notice of the cash collateral hearing to all parties it must serve with the cash collateral motion and to any other entities as the court may direct (Fed. R. Bankr. P. 4001(b)(3) and see Service of the Cash Collateral Motion).

Local Rules

There are no W.D. Ky. local bankruptcy court rules that supplement the requirements of Bankruptcy Rule 4001(c). While there is no specific local rule, local practice requires a budget to be submitted with a motion to use cash collateral.

Chapter 15

Background/Federal Requirements

Chapter 15 of the Bankruptcy Code, enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), is designed to help the US recognize foreign insolvency proceedings and increase international cooperation among courts in multinational insolvency cases to more effectively address cross-border insolvency issues. Chapter 15 expands the scope of its predecessor, section 304 of the Bankruptcy Code, which is now repealed. It codifies the Model Law on Cross-Border Insolvency in substantially the same way it was written by the United Nations Commission on International Trade Law (UNCITRAL). In the US, Chapter 15 is the exclusive remedy for a foreign representative seeking injunctive relief against litigation in US courts that would interfere with a foreign bankruptcy proceeding.

The following Bankruptcy Rules apply in Chapter 15 cases:

- Federal Rule of Bankruptcy Procedure 1002.
- Federal Rule of Bankruptcy Procedure 1004.2.
- Federal Rule of Bankruptcy Procedure 1007(a)(4).
- Federal Rule of Bankruptcy Procedure 1010.
- Federal Rule of Bankruptcy Procedure 1011.
- Federal Rule of Bankruptcy Procedure 1012.
- Federal Rule of Bankruptcy Procedure 2002(q).
- Federal Rule of Bankruptcy Procedure 2015(d).
- Federal Rule of Bankruptcy Procedure 3002.
- Federal Rule of Bankruptcy Procedure 5012.

For more information on Chapter 15, see [Practice Note, Chapter 15 Overview: US Bankruptcy Cases Ancillary to Foreign Proceedings](#).

Local Rules

The W.D. Ky. does not have any local rules directly concerning Chapter 15 proceedings.

Claims Trading

Background/Federal Requirements

Bankruptcy claims trading generally involves the buying and selling of claims against companies seeking relief under the Bankruptcy Code. Estimates of the size of the bankruptcy claims trading market vary widely and range in recent years from over \$40 billion in 2018 to an estimated \$25 billion in 2016. The vast majority of the claims trading market centers on those claims which are, at least to some degree, liquidated and undisputed. Buyers and sellers trade secured claims, trade claims, and counterparty claims.

The claims trading market is not limited to traditional buy and hold investors. Particularly in large Chapter 11 cases, claims are often traded and re-traded many times by large scale market players and those who practice arbitrage, either as part of a buy low, sell high strategy, or as part of a larger strategic effort to exercise control in a debtor's case.

For more information on claims trading, see [Practice Note, Bankruptcy Claims Trading: Basic Concepts](#).

Bankruptcy Rule 3001(e)(1)

If a proof of claim has not been filed before the time of the transfer, then the buyer may file a proof of claim if the

claim has been transferred other than for security. A claim is transferred other than for security if it is not transferred for the purpose of providing collateral. (Fed. R. Bankr. P. 3001(e)(1).)

Bankruptcy Rule 3001(e)(2)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred other than for security **after** a proof of claim has been filed, the buyer must file evidence of the transfer. Once the evidence has been filed, the court clerk notifies the seller by mail of the filing. The seller then has 21 days after the mailing of the notice to object. The court holds a hearing if the seller files a timely objection. If the court finds that the claim has been transferred other than for security, it enters an order substituting the buyer for the seller as the new owner of the claim on the books and records of the bankruptcy court. If the seller does not file an objection, the buyer is automatically substituted for the seller. (Fed. R. Bankr. P. 3001(e)(2).)

Bankruptcy Rule 3001(e)(3)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security **before** a proof of claim has been filed, either the buyer or the seller or both can file proof of claim for the full amount of the transfer. A claim is transferred for security if it is transferred to provide collateral. The proof of claim must be supported by a statement setting out the terms of the transfer. (Fed. R. Bankr. P. 3001(e)(3) and see Bankruptcy Rule 3001(e)(1).)

Bankruptcy Rule 3001(e)(4)

If a claim, other than one based on a publicly traded note, bond, or debenture, has been transferred for security **after** a proof of claim has been filed, the buyer must file evidence of the transfer (Fed. R. Bankr. P. 3001(e)(4) and see Bankruptcy Rule 3001(e)(2)).

Local Rules

The W.D. Ky. does not have any local rules concerning claims trading.

Closing and Reopening a Chapter 7 Case

Background/Federal Requirements

Closing the Case

The court closes a Chapter 7 bankruptcy case either:

- When the Chapter 7 trustee has fully administered the case.
- If the debtor fails to file a statement of completion of a personal financial management course before the 60th day after the initial date set for the section 341 meeting of creditors.

(Fed. R. Bankr. P. 5009(a), (b).)

A case is fully administered when:

- The Chapter 7 trustee files a final report and account.
- Neither the US Trustee nor a party in interest objects to the final report in 30 days from its filing.
- The Chapter 7 trustee has addressed all administrative claims.

For more information on closing a case, see [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Closing a Fully Administered Chapter 7 Case and Closing a Chapter 7 Case for Failure to File Statement of Completion of Personal Financial Management Course](#).

The Chapter 7 trustee files a notice of the filing of the final report and account providing:

- The date and time of a hearing to consider:
 - the final report; and
 - requests for allowance of compensation requested by the Chapter 7 trustee and its professionals.
- The total amount of:
 - receipts and disbursements;
 - other paid claims; and
 - allowed general unsecured claims.
- The time and date of any hearing on the abandonment of estate property.

(See [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Final Report and Account](#).)

Reopening a Chapter 7 Case

The court has discretion to reopen a closed case under section 350(b) of the Bankruptcy Code on a motion by:

- The debtor.
- A party in interest, including the Chapter 7 trustee.

(Fed. R. Bankr. P. 5010.)

The court only appoints a Chapter 7 trustee if the court determines that a trustee is necessary to either:

- Protect the interests of:
 - creditors; and
 - the debtor.
- Insure efficient administration of the estate.

(Fed. R. Bankr. P. 5010.)

For more information on reopening a Chapter 7 case, see [Practice Note, Closing and Reopening a Chapter 7 Bankruptcy Case: Reopening a Closed Chapter 7 Case](#).

Local Rules

The W.D. Ky. does not have any local rules concerning closing and reopening a Chapter 7 case.

Complex Chapter 11 Case Procedures

Background/Federal Requirements

Many bankruptcy courts have adopted case management procedures and processes designed to facilitate the filing and administration of complex Chapter 11 cases, or megacases, to ensure the least possible disruption to the debtor's business and to enhance the chances for success. These procedures make courts more responsive, predictable, and accessible.

Complex Chapter 11 cases are typically defined as those exhibiting a combination of one or more of the following factors:

- Debt over a specified amount.
- More than a certain number of creditors or other parties in interest.
- Publicly traded debt or equity.
- The need for simplification of noticing and hearing procedures to reduce delays and expense.

Complex Chapter 11 case procedures provide processes and requirements for certain aspects of the case, including:

- Expedited first day hearings.
- Preset omnibus hearing dates on a weekly, bi-weekly, or monthly basis.
- Operational guidelines for:
 - paying professional fees;
 - selling assets; and
 - obtaining DIP financing.

If counsel believe their case should be classified as a complex Chapter 11 case, they typically must file with the petition a notice, request, or motion to have the case designated as complex. The court, in its discretion, weighs the factors in deciding whether to designate a case as complex. If the court approves the designation, then the case is designated as complex, and the complex Chapter 11 case procedures apply.

Local Rules

The W.D. Ky. has no local rules providing procedures for complex Chapter 11 cases.

DIP Financing

Background/Federal Requirements

The bankruptcy court, after notice and a hearing, may approve a debtor's DIP financing arrangements (§ 364(c), (d), Bankruptcy Code). A debtor-in-possession or trustee seeking DIP financing must comply with:

- Section 364 of the Bankruptcy Code (see Section 364(d) of the Bankruptcy Code).
- Federal Rule of Bankruptcy Procedure 4001(c) (see Bankruptcy Rule 4001(c)).
- Any applicable local bankruptcy court rules (see DIP Financing: Local Rules).

This Note assumes that the DIP financing does not include provisions regarding use of cash collateral.

For more information on DIP financing, see [Practice Note, DIP Financing: Overview](#) and [Timeline of DIP Financing Process](#).

Section 364(d) of the Bankruptcy Code

A DIP financing request in any jurisdiction must provide:

- **Notice and a hearing.** The court must determine that reasonable notice has been given to parties in interest and that there has been a hearing, to the extent one is necessary (§ 364(c), (d), Bankruptcy Code and see Notice and Hearing on the DIP Financing Motion).
- **A showing of the inability to obtain credit on less onerous terms.** The debtor must demonstrate that it made efforts to obtain financing elsewhere on better terms (§ 364(c), (d)(1)(A), Bankruptcy Code). The debtor's efforts do not have to be exhaustive, just sufficient under the circumstances, which means that for:

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- non-priming DIPs, the debtor tried but was unable to obtain financing on an unsecured, administrative priority basis (see [Practice Note, DIP Financing: Overview: Non-Priming DIPs](#) and [Box: Unsecured Postpetition Financing](#)); and
- priming DIPs, the debtor tried but was unable to obtain a non-priming DIP (see [Practice Note, DIP Financing: Overview: Priming DIPs](#)).

The debtor commonly submits a written declaration of a business person or a financial advisor in support of its motion that discusses the debtor's efforts to obtain financing on better terms (see [Standard Document, Declaration: General \(Federal\)](#)). It is also common practice and sometimes required by local bankruptcy court rules for the declarant, a business person from the debtor (which may be the declarant), and a lender representative to attend the hearing or be reasonably available by telephone to address questions and, if necessary, authorize revisions to the proposed financing.

- **Adequate protection.** This requirement only applies to priming DIPs. The debtor must show that the holder of the existing lien on property on which a senior or equal lien is granted is adequately protected from any diminution in the value of its collateral caused by the priming of its lien (§ 364(d)(1)(B), Bankruptcy Code). This requirement is usually difficult to satisfy if the primed lender objects, unless there is a substantial equity cushion for the objecting lender (see [Practice Note, DIP Financing: Overview: Perspective of the Primed Lender](#)). The adequate protection provided depends on the circumstances of the case (see [Practice Note, Adequate Protection: Overview: What Is Adequate Protection?](#)).

Bankruptcy Rule 4001(c)

A DIP financing request in any jurisdiction must comply with Bankruptcy Rule 4001(c), which sets out requirements regarding:

- The contents of a DIP financing motion (see [DIP Financing Motion Attachments and Contents](#)).
- Service of the DIP financing motion (see [Service of the DIP Financing Motion](#)).
- Notice and hearing on the DIP financing motion (see [Notice and Hearing on the DIP Financing Motion](#)).

DIP Financing Motion Attachments and Contents

A DIP financing motion must be accompanied by:

- A copy of the proposed DIP financing credit agreement.
- The proposed form of order.

(Fed. R. Bankr. P. 4001(c)(1)(A).)

The DIP financing motion must include a concise statement of the relief requested, summarizing, and setting out the location within relevant documents of, all the material provisions of the proposed credit agreement and form of order, including:

- The interest rate.
- Maturity.
- Events of default.
- Liens.
- Borrowing limits.
- Borrowing conditions.

(Fed. R. Bankr. P. 4001(c)(1)(B).)

If the proposed credit agreement or form of order includes any of the provisions below, the concise statement must also:

- Briefly list or summarize each provision.
- Identify their location in the proposed agreement or form of order.
- Identify any provision that is proposed to remain in effect if interim approval is granted, but final relief is denied, as provided under Bankruptcy Rule 4001(c)(2).

(Fed. R. Bankr. P. 4001(c)(1)(B).)

The motion must also describe the nature and extent of each of the following provisions:

- A grant of priority or a lien on property of the estate under:
 - section 364(c) of the Bankruptcy Code, which addresses non-priming DIPs (see [Practice Note, DIP Financing: Overview: Non-Priming DIPs](#)); or
 - section 364(d) of the Bankruptcy Code, which addresses priming DIPs (see [Practice Note, DIP Financing: Overview: Priming DIPs](#)).
- The method of providing adequate protection or priority for a prepetition claim, including:
 - granting a lien on property of the estate to secure the claim (see [Practice Note, Adequate Protection: Overview: Additional or Replacement Lien](#)); or
 - using property of the estate or credit obtained under section 364 of the Bankruptcy Code to make cash payments on account of the claim (see [Practice Note, Adequate Protection: Overview: Cash Payment or Periodic Cash Payments](#)).

(Fed. R. Bankr. P. 4001(c)(1)(B)(ii).)

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- A determination of the validity, enforceability, priority, or amount of a prepetition claim or of any lien securing the claim (Fed. R. Bankr. P. 4001(c)(1)(B)(iii)).
 - A waiver or modification of the automatic stay (Fed. R. Bankr. P. 4001(c)(1)(B)(iv) and see [Practice Note, Automatic Stay: Overview: Relief from the Stay and Waivers of the Stay](#)).
 - A waiver or modification of any party's authority or right to:
 - file a plan (see [Practice Note, Chapter 11 Plan Process: Overview: Who May File a Plan?](#));
 - seek an extension of the debtor's exclusivity period to file a plan (see [Practice Note, Chapter 11 Plan Process: Overview: Contesting Exclusivity](#));
 - request the use of cash collateral under section 363(c) of the Bankruptcy Code (see [Practice Note, Cash Collateral: Overview](#)); or
 - request authority to obtain credit under section 364 of the Bankruptcy Code (see [Practice Note, DIP Financing: Overview](#)).(Fed. R. Bankr. P. 4001(c)(1)(B)(v).)
 - The setting of a deadline for:
 - filing a plan of reorganization;
 - approval of a disclosure statement;
 - a hearing on confirmation; or
 - entry of a confirmation order.(Fed. R. Bankr. P. 4001(c)(1)(B)(vi) and see [Practice Note, Chapter 11 Plan Process: Overview](#).)
 - A waiver or modification of the applicability of nonbankruptcy law relating to:
 - the perfection of a lien on property of the estate; or
 - the foreclosure or other enforcement of the lien.(Fed. R. Bankr. P. 4001(c)(1)(B)(vii).)
 - A release, waiver, or limitation on any claim or other cause of action belonging to the estate or the trustee, including any modification of the statute of limitations or other deadline to file an action (Fed. R. Bankr. P. 4001(c)(1)(B)(viii)).
 - The indemnification of any entity (Fed. R. Bankr. P. 4001(c)(1)(B)(ix)).
 - A release, waiver, or limitation of any right to surcharge collateral under section 506(c) of the Bankruptcy Code (Fed. R. Bankr. P. 4001(c)(1)(B)(x) and see [Practice Note, The Section 506\(c\) Surcharge on Collateral](#)).
 - The granting of a lien on any claim or cause of action arising under:
 - section 544 of the Bankruptcy Code (transfers avoidable under applicable state law);
 - section 545 of the Bankruptcy Code (avoidable statutory liens);
 - section 547 of the Bankruptcy Code (transfers avoidable as preferences);
 - section 548 of the Bankruptcy Code (transfers avoidable as fraudulent conveyances);
 - section 549 of the Bankruptcy Code (transfers avoidable as postpetition transactions);
 - section 553(b) of the Bankruptcy Code (setoffs made during the 90-day period before bankruptcy that improve a creditor's position);
 - section 723(a) of the Bankruptcy Code (claims against general partners who are personally liable for any deficiency of the partnership debtor's property to meet claims against the partnership); and
 - section 724(a) of the Bankruptcy Code (avoidable liens that secure a fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, but not to the extent these liens secure claims for actual pecuniary loss).
- ### Service of the DIP Financing Motion
- The DIP financing motion must be served on:
- Any committee or its authorized agent formed under:
 - section 705 of the Bankruptcy Code in a Chapter 7 case; or
 - section 1102 of the Bankruptcy Code in a Chapter 11 case (see [Practice Notes, Chapter 11 Creditors' Committees](#) and [Chapter 11 Equity Committees](#)).
 - If the case is a Chapter 9 municipality case or a Chapter 11 case in which no committee has been appointed under section 1102, the top 20 unsecured creditors identified on the list filed under Federal Rule of Bankruptcy Procedure 1007(d) (see [Standard Document, List of Largest Unsecured Creditors](#)).
 - Any other entity that the court may direct.
- (Fed. R. Bankr. P. 4001(c)(1)(C).)
- A DIP financing motion is a contested matter for which a motion must be made under Federal Rule of Bankruptcy Procedure 9014 (Fed. R. Bankr. P. 4001(c)(1)(A)). Under

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Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.

If the motion is supported by an affidavit, the debtor must serve them together and any written response must be served no later than one day before the hearing, unless permitted by the court (Fed. R. Bankr. P. 9006(d)). The debtor commonly submits a written declaration of a business person or financial advisor in support of its DIP financing motion (see Section 364(d) of the Bankruptcy Code).

Notice and Hearing on the DIP Financing Motion

The court may hold an interim hearing to authorize the immediate access to financing to the extent necessary to avoid immediate and irreparable harm to the estate, but it cannot hold a final hearing earlier than 14 days from the date the debtor serves the DIP financing motion (Fed. R. Bankr. P. 4001(c)(2)).

The debtor must give notice of the hearing to all parties it must serve with the DIP financing motion and to any other entities as the court may direct (Fed. R. Bankr. P. 4001(c)(3) and see Service of the DIP Financing Motion).

Local Rules

The W.D. Ky. does not have any local rules addressing DIP financing.

Domestic Support Obligations

Background/Federal Requirements

A domestic support obligation, defined in section 101(14A) of the Bankruptcy Code, is a debt that is:

- Owed to or recoverable by:
 - the debtor's spouse (§ 101(14A)(A)(i), Bankruptcy Code);
 - the debtor's former spouse (§ 101(14A)(A)(i), Bankruptcy Code);
 - the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code);
 - the parent, legal guardian, or responsible relative of the debtor's child (§ 101(14A)(A)(i), Bankruptcy Code); or
 - a governmental unit (§ 101(14A)(A)(ii), Bankruptcy Code).
- In the nature of alimony, maintenance, or child support (§ 101(14A)(B), Bankruptcy Code).

- Included in:
 - a separation agreement (§ 101(14A)(C)(i), Bankruptcy Code);
 - a divorce decree (§ 101(14A)(C)(i), Bankruptcy Code);
 - a property settlement agreement (§ 101(14A)(C)(i), Bankruptcy Code);
 - a court order (§ 101(14A)(C)(ii), Bankruptcy Code); or
 - a lawful determination by a governmental unit (§ 101(14A)(C)(iii), Bankruptcy Code).
- Not assigned to any nongovernmental entity except to collect the debt (§ 101(14A)(D), Bankruptcy Code).

A domestic support obligation:

- Can accrue before, on, or after the petition date and can accrue interest under applicable non-bankruptcy law (§ 101(14A), Bankruptcy Code).
- Cannot be discharged under any chapter of the Bankruptcy Code, including Chapters 7, 11, 12, or 13.

(§ 523(a)(5), Bankruptcy Code.)

A Chapter 12 or 13 debtor must remain current on postpetition domestic support obligations to receive a discharge under Chapters 12 and 13 (§§ 1228(a) and 1328(a), Bankruptcy Code). An individual Chapter 11 debtor must remain current on postpetition domestic support obligations as a condition to confirmation of its plan (§ 1129(a)(14), Bankruptcy Code).

Official Bankruptcy Form B2830

Official Bankruptcy Form B2830 is used to certify under section 1328(a) of the Bankruptcy Code that the debtor either:

- Owed no domestic support obligation when the bankruptcy petition was filed and was not required to pay any domestic support obligation since then.
- Was required to pay a domestic support obligation and has paid all amounts:
 - required under the Chapter 13 plan; and
 - that became due between the petition date and the day of the certification.

The debtor must also certify that the debtor has either:

- Not claimed an exemption under section 522(b)(3) of the Bankruptcy Code or state or local law, as specified in section 522(p)(1) and (2) of the Bankruptcy Code:

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- in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
- that exceeds \$170,350 in value.
- Claimed an exemption under section 522(b)(3) or state or local law, as specified in section 522(p)(1) and (2):
 - in property that the debtor or a dependent uses as a residence, claims as a homestead, or acquired as a burial plot; and
 - that exceeds \$170,350 in value.

The [Instructions to Official Bankruptcy Form 2830](#) provide that:

- In a joint case, each debtor must file the certifications.
- The debtor must make the certifications after it has completed the plan payments.

Local Rules

The W.D. Ky. does not have any local rules specifically addressing domestic support obligations.

Electronic Court Filing and Transmission of Highly Sensitive Documents

Background/Federal Requirements

Cybersecurity is an important issue for bankruptcy professionals and how they counsel debtor, creditor, and other bankruptcy clients. The debtor and estate professionals collect large amounts of personally identifiable information (PII) and other sensitive data that has significant value to hackers and other cyberattackers.

After the disclosure of widespread cybersecurity breaches of both private sector and government computer systems, in 2021 US federal courts began implementing new security procedures to protect highly sensitive confidential documents (HSDs) filed with the courts. Many US bankruptcy courts have entered orders requiring parties to file HSDs outside of the electronic court filing (CM/ECF) system.

Under the new procedures, HSDs filed with federal courts will be accepted for filing in paper form or by a secure electronic device, such as a thumb drive, and stored in a secure stand-alone computer system. These sealed HSDs will not be uploaded to CM/ECF. This new practice will not change current policies regarding public access to

court records, since sealed records are confidential and currently are not available to the public.

Federal courts, including bankruptcy courts, will issue standing or general orders regarding the new HSD procedures. While the procedures apply to all HSDs filed with a court, not all sealed filings are considered an HSD. The specific bankruptcy court orders will address the type of filings a court does and does not consider to be HSDs.

For more information, see [Practice Note, Cybersecurity in Bankruptcy](#).

Local Rules

The W.D. Ky. Local Bankruptcy Court Rules do not contain any rules relating to HSDs. However, the court has entered Bankr. W.D. Ky. General Order 2021-1, which requires parties to file HSDs outside of the court's electronic filing system.

Under Bankr. W.D. Ky. General Order 2021-1, represented parties must file a motion requesting permission to file sensitive documents under seal and to designate them as HSDs. The moving party should not file a copy of the proposed HSD with the motion. The motion must instead include a description of the proposed HSD sufficient for the court to consider the motion. The movant's proposed order should not include details of the proposed HSD and should reflect only that the motion to file an HSD under seal has been granted. The court may require the moving party to file a paper copy of the proposed HSD, if appropriate.

Parties who are not represented by counsel must file motions to designate documents as HSDs in paper format with the clerk's office in Louisville, Kentucky. Pro se HSD motions are otherwise subject to the same requirements as those filed by represented parties.

First Day Declarations

Background/Federal Requirements

The first day declaration is an independent document executed by a key executive or senior officer of the debtor, providing an explanation of the debtor's business, the events leading to the Chapter 11 case, the basis for the relief sought in the first day motions, and often the debtor's future intentions for the Chapter 11 case.

The transition into bankruptcy can be difficult for most companies, as their board of directors and management are forced to accept new limitations on their authority to operate the business and adapt to their new fiduciary

duties to the debtor's secured creditors and unsecured creditors. The transition is equally difficult for a debtor's employees, lessors, creditors, and customers.

A first day declaration can help mitigate these concerns by providing an explanation for the events that led to the bankruptcy and a road map for the Chapter 11 case.

For more information on first day declarations, see [Practice Note, Chapter 11 First Day Declaration](#).

Local Rules

The W.D. Ky. does not have any local rules concerning first day declarations.

First Day Motions

Background/Federal Requirements

A Chapter 11 debtor typically files several motions on or soon after the petition date to seek relief necessary to ease the debtor's transition into bankruptcy. These first day motions address both administrative and operational issues and may seek relief on an interim or final basis.

For more information on first day motions, see [Practice Note, First Day Motions: Overview](#) and [First Day Relief: Debtor Checklist](#).

Local Rules

The W.D. Ky. does not have any local rules or practices relating to first day relief.

Post-Confirmation Requirements

Background/Federal Requirements

Local bankruptcy court rules may contain post-confirmation requirements for Chapter 11 cases, including liquidating cases. These requirements can include:

- Submission of a post-confirmation timetable and proposed order.
- Filing of periodic post-confirmation reports.
- Filing a closing or final report.
- A motion for a final decree.

Local Rules

W.D. Ky. Local Bankruptcy Court Rule 2081-1 contains specific rules relating to post-confirmation requirements

in Chapter 11 cases. W.D. Ky. Local Bankruptcy Court Rule 2081-1(a) provides that unless otherwise provided in the confirmation order, the debtor (or plan proponent) must complete and file with the court within 60 days of the entry of the confirmation order the Certification and Request for Entry of Final Decree (W.D. Ky. Local Bankruptcy Form U), which is available as a virtual event with no PDF document required. The time for filing may be extended on proper motion for cause.

Regarding discharges under section 1141(d)(5)(A) of the Bankruptcy Code, W.D. Ky. Local Bankruptcy Court Rule 2081-1(b) provides that on completion of all plan payments, the debtor may move to reopen an individual Chapter 11 case to obtain a discharge. The motion to reopen must be accompanied by a Certification of Plan Completion and Request for Discharge (W.D. Ky. Local Bankruptcy Form S). If no creditors or parties in interest file a response with the court, the court will issue a discharge and re-close the case. A waiver of the reopening fee will be considered on proper motion.

W.D. Ky. Local Bankruptcy Court Rule 2081-1(b)(4) provides that a motion by the debtor for a discharge under section 1141(d)(5)(B) of the Bankruptcy Code must be accompanied by the Certification of Debtor Eligibility Regarding Request for Discharge Prior to Completion of Plan Payments (W.D. Ky. Local Bankruptcy Form T).

W.D. Ky. Local Bankruptcy Court Rule 2081-1 does not apply to Subchapter V cases (see Subchapter V of Chapter 11: Local Rules).

Prepacks

Background/Federal Requirements

Prepackaged bankruptcies, typically known as "prepacks," have become more popular since the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). The BAPCPA has promoted the use of prepacks and has made traditional Chapter 11 bankruptcy cases more difficult and expensive. A prepack is a Chapter 11 bankruptcy in which the debtor negotiates the terms of and solicits votes on a plan before it files its Chapter 11 bankruptcy petition. Prepacks allow a company to emerge more quickly and efficiently from bankruptcy, while reducing the risks and uncertainties involved with negotiating a traditional plan during bankruptcy proceedings.

For more information on prepacks, see [Practice Note, The Prepackaged Bankruptcy Strategy](#) and [Timeline of a Prepackaged Bankruptcy Case](#).

Local Rules

The W.D. Ky. does not have any specific local rules governing prepackaged bankruptcies.

Professional Fee Requests

Background/Federal Requirements

There are three components to getting paid as a professional to a Chapter 11 estate:

- The bankruptcy court must approve the professional's retention on notice to the US Trustee and key creditors. For information on getting retained as a professional to the DIP, see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession](#).
- Once a retention is approved, professionals have ongoing fiduciary duties and statutory obligations. For information on a DIP professional's ongoing duties and obligations, see [Practice Note, Fiduciary Duties and Statutory Obligations of Professionals to the Debtor-in-Possession](#).
- A DIP professional's fees and expenses must be approved under section 330 of the Bankruptcy Code and, if applicable, section 328 of the Bankruptcy Code (see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee](#)).

The fees and expenses of a professional retained under section 327 of the Bankruptcy Code are subject to court approval under sections 330 and 331 of the Bankruptcy Code. Section 328(a) of the Bankruptcy Code provides a mechanism for seeking preapproval of reasonable terms and conditions for compensation of professionals employed under section 327 (see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession: Preapproval of Fee Arrangements](#)).

Individual judges and local court rules also contain requirements relating to fee requests. The US Trustee has also issued fee guidelines with detailed requirements (see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee: US Trustee Fee Guidelines](#)).

Under section 503(b)(2) of the Bankruptcy Code, compensation awarded under section 330(a) is classified as an administrative claim.

For more information on professional fee requests, see [Practice Note, Getting Paid as a Professional to a Chapter 11 Debtor or Trustee](#).

Local Rules

The W.D. Ky. does not have any local rules governing professional fee requests.

Section 2.1 of the Bankr. W.D. Ky. Administrative Manual provides that in Chapter 11 cases, applications for compensation filed by attorneys and their firms must include professional biographies for all professionals requesting payment.

No-Look Attorneys' Fees

For information on no-look fees (often called flat fees or presumptively reasonable fees) for attorney services in Chapter 13 cases in the W.D. Ky., see [Practice Note, Fee Arrangements in Chapter 13 Bankruptcy Cases: Box: Chapter 13 No-Look Attorney Fees by Jurisdiction](#).

Professional Retention Applications

Background/Federal Requirements

A debtor-in-possession (DIP) must obtain bankruptcy court approval in order to retain professionals. Those professionals must demonstrate disinterestedness and a lack of any interest adverse to the estate. Court approval of the retention of the DIP's professionals is subject to significant disclosure obligations and conflict-of-interest rules.

To ensure the disinterestedness of the DIP's professionals, conflicts of interest are more strictly interpreted in bankruptcy than in other areas of the law. Certain conflicts that a client can waive after full disclosure outside of bankruptcy (such as simultaneous representation of a client and a client's creditor) cannot be waived in bankruptcy. Even potential conflicts must be avoided. The Bankruptcy Code's strict conflict-of-interest requirements help ensure undivided loyalty and promote public confidence in the bankruptcy process.

For more information on the rules and procedures related to the DIP's retention of professionals, see [Practice Note, Getting Retained as a Professional to the Debtor-in-Possession](#).

Local Rules

The W.D. Ky. has no local rules relating to professional retention applications.

Proofs of Claim and Objections to Claims

Background/Federal Rules

A proof of claim is a written statement setting out a creditor's claim and asserting its right to receive a distribution from the bankruptcy estate. It must "conform substantially" to Official Bankruptcy Form B410 (Fed. R. Bankr. P. 3001(a)). The purpose of a proof of claim is to give notice of the claim to the court, the debtor, the trustee, and other creditors.

A properly prepared proof of claim constitutes prima facie evidence of the validity and amount of the claim (Fed. R. Bankr. P. 3001(f)) and is deemed allowed, unless a party in interest (such as the debtor) objects (§ 502(a), Bankruptcy Code). This means any distribution of the debtor's assets made on account of a claim is based on the filed proof of claim if it is not challenged (or survives a challenge).

For more information on proofs of claim, see [Practice Notes, Filing a Proof of Claim in a Chapter 11 Bankruptcy Case](#) and [Filing a Proof of Claim: Pitfalls and Precautions](#).

For more information on objections to claims, see [Practice Note, Objections to Claims: Overview](#).

Local Rules

W.D. Ky. Local Bankruptcy Court Rule 3001-1(a) requires that all proofs of claims be typewritten, substantially comply with Official Bankruptcy Form B410, and include:

- The total gross balance due.
- The amount of unmatured interest rebated.
- The net balance due.
- The regular installment payment amount.
- The interest rate (contract rate or *per diem* rate, whichever applies) at which interest accrues.
- A copy of the security interest or lien, including proof of recording.
- The federal and state identification number of the company filing the proof of claim.
- A statement of account or other evidence of indebtedness.
- The claimant's telephone number.

W.D. Ky. Local Bankruptcy Court Rule 3001-1(b) requires that all secured and priority claims of creditors:

- Be filed in the clerk's office within seven days before the meeting of creditors.
- Include a rebated balance as of the date of filing.

W.D. Ky. Local Bankruptcy Court Rule 3001-1(c)(1) provides that:

- In Chapter 7 cases, deficiency claims arising from the disposition of secured collateral must be filed no later than 120 days following the order of the court granting relief from the automatic stay, but in no event later than the approval of a final report.
- This time period may be enlarged only on motion made within the 120-day time period and only for cause shown.

W.D. Ky. Local Bankruptcy Court Rule 3001-1(c)(2) provides that:

- In Chapter 12 and 13 cases, deficiency claims arising from the disposition of secured collateral must be filed no later than 120 days following the order of the court granting relief from the automatic stay. The W.D. Ky. Local Bankruptcy Court Rules do not address the extension of this deadline, but the trustee would likely object to any extension because of the effect on distributions to unsecured creditors under the applicable plan.
- Counsel for the debtor have 30 days from the date of the filing of the creditor's deficiency proof of claim to file an objection to this claim. Failure to file a timely objection results in this claim being deemed allowed.
- Debtor's counsel have 30 days in which to file a supplemental schedule of allowed claims after allowance of the deficiency claim.

W.D. Ky. Local Bankruptcy Court Rule 3001-1(c)(3) provides that in Chapter 11 cases, deficiency claims arising from the disposition of secured collateral must be filed:

- No later than 120 days following the order of the court granting relief from the automatic stay.
- By the date set in any other order setting the bar date for these claims.

This time period may be enlarged only on motion made within the 120-day time period and only for cause shown.

Reaffirmation of Debt

Background/Federal Requirements

A debtor may choose to keep a loan in place rather than discharge the loan in bankruptcy, especially if the debtor

wants to retain the property, such as a vehicle or a family home, that is subject to a security interest. To retain property that acts as collateral for a loan, the debtor can enter into a new contract for the loan with the creditor called a reaffirmation agreement. Under a reaffirmation agreement, the debtor:

- Reaffirms personal liability on the debt that would be otherwise discharged under section 524(a)(1) of the Bankruptcy Code.
- Retains the property.
- Continues to make payments on the loan to prevent the creditor from foreclosing on its underlying collateral.

Reaffirmation is governed by section 524 of the Bankruptcy Code. A reaffirmation agreement must strictly comply with the requirements of section 524(c), (d), and (m) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 4004(c)(1)(J) and (K) and (c)(2) and 4008 to be valid.

For more information on reaffirmation of debt in bankruptcy, see [Practice Note, Reaffirmation of Debt in Chapter 7 Bankruptcy](#).

Bankruptcy Rule 4004(c)(1)(J)

If a motion to enlarge the time to file a reaffirmation agreement is pending (Fed. R. Bankr. P. 4008(a)), the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(J)).

Bankruptcy Rule 4004(c)(1)(K)

If a presumption has arisen that the reaffirmation agreement is an undue hardship on the debtor under section 524(m) of the Bankruptcy Code and the court has not concluded the hearing on this presumption, the bankruptcy court will not grant a Chapter 7 discharge, even if the time for filing an objection to discharge has expired (Fed. R. Bankr. P. 4004(c)(1)(K)).

Bankruptcy Rule 4004(c)(2)

A reaffirmation agreement must be entered into before discharge (§ 524(c)(1), Bankruptcy Code). However, the agreement does not need to be approved by the court before discharge. For this reason, Federal Rule of Bankruptcy Procedure 4004(c)(2) allows a delay in the entry of the discharge order for 30 days on the debtor's motion and for further time on a motion made within the 30-day period.

Bankruptcy Rule 4008(a)

The reaffirmation agreement must be filed with the court no more than 60 days after the first date set for the meeting of creditors (§ 524(c)(3)(A)-(C), Bankruptcy Code; Fed. R. Bankr. P. 4008(a)). The court can, at any time and in its discretion, enlarge the time to file the reaffirmation agreement (Fed. R. Bankr. P. 4008(a)).

When filed, the reaffirmation agreement must be accompanied by:

- The reaffirmation cover sheet (Fed. R. Bankr. P. 4008(a); Official Bankruptcy Form B427).
- If applicable, an attorney declaration.

Bankruptcy Rule 4008(b)

The debtor's signed statement in support of the reaffirmation agreement is accompanied by a statement of the total income and expenses stated on the debtor's Schedules I (Official Bankruptcy Form B106I) and J (Official Bankruptcy Form B106J and Official Bankruptcy Form B106J-2). If there is a difference between the income and expenses stated on the debtor's statement in support of the reaffirmation agreement and Schedules I and J, the debtor's statement in support of the reaffirmation agreement should include an explanation of that difference (Fed. R. Bankr. P. 4008(b)).

Local Rules

The W.D. Ky. Local Bankruptcy Court Rules do not contain any special or additional requirements relating to the reaffirmation of a debt. By local practice, the court will set a hearing on reaffirmations that show undue hardship or if the debtor is not represented by counsel for the reaffirmation.

Removal, Remand, and Abstention in Bankruptcy

Background/Federal Requirements

Removal, remand, and abstention are important tools to be considered during a bankruptcy proceeding for transferring claims to another court or to prevent that court from determining an issue that it should not hear and decide.

A party can unilaterally remove an action pending in state court to either the district court or the bankruptcy court.

After removal, on motion of a non-removing party, the court can remand the matter back to state court or the court, on its own motion or a motion of party, can abstain from hearing a matter because the state court is capable of hearing and deciding the matter. Abstention is either mandatory or permissive.

For more information on removal, remand, and abstention in bankruptcy cases, see [Practice Note, Notice of Removal, Remand, and Abstention in Bankruptcy](#).

Local Rules

The W.D. Ky. does not impose any additional requirements on notice of removal, remand, and abstention in bankruptcy.

Retaining a Claims Agent

Background/Federal Requirements

To relieve administrative pressure on both debtors and the bankruptcy clerk, Congress enacted 28 U.S.C. Section 156(c) to permit outside vendors (claims agents), at the expense of the bankruptcy estate, to assume certain specified administrative functions mandated by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Section 156(c) limits the function of the claims agent to that of a delegatee of the clerk of court to perform the following tasks:

- Managing the claims process.
- Providing noticing services.
- Disseminating information to the public and responding to requests for case information.

Claims agents, however, may also be retained as administrative agents under section 327 of the Bankruptcy Code to provide services beyond the constraints of 28 U.S.C. Section 156(c), including:

- Assisting with the preparation of schedules of assets and liabilities (schedules) and statements of financial affairs (statements) (see [Practice Note, Schedules and Statements of Financial Affairs: Overview](#)).
- Aggregating, sorting, and analyzing proofs of claims.
- Assisting with the reconciliation of claims and the analysis of executory contracts and unexpired leases, including issues such as the cure, assumption, and rejection of contracts and leases.
- Soliciting and tabulating votes on plans of reorganization.
- Making distributions according to the terms of the plan.

For more information on the role and responsibilities of a claims agent, see [Practice Note, The Retention and Role of a Claims Agent in Bankruptcy](#).

Local Rules

W.D. Ky. Local Bankruptcy Court Rule 2002-1(a) provides that in all Chapter 11 cases, the clerk must serve as the primary noticing agent unless the court orders otherwise.

Retention of Local Counsel

Background/Federal Requirements

As a general rule, attorneys not admitted in the jurisdiction where a bankruptcy case is pending must be admitted *pro hac vice* to appear before the bankruptcy court in that case. To be admitted *pro hac vice*, an attorney must often certify or attest to certain facts, including that the attorney is:

- Eligible for admission to the bankruptcy court.
- Admitted and in good standing as a member of the bar in the attorney's state of practice.
- Willing to submit to the disciplinary jurisdiction of the bankruptcy court for any alleged misconduct in the course of the case for which the attorney is admitted.
- Generally familiar with the court's local rules.

Applicable rules also frequently require the attorney seeking *pro hac vice* admission to pay a fee.

Counsel must review rules and practices of the relevant jurisdiction in which a case is filed or will be filed to determine whether to retain local counsel and to understand the requirements for *pro hac vice* admission.

Local Rules

Locator and claims purchasing services must be represented by local counsel to file motions for release of unclaimed funds (Bankr. W.D. Ky. Administrative Manual Section 2.5(g)).

E.D./W.D. Ky. Joint Local Civil Rule 83.2 applies to *pro hac vice* motions filed in bankruptcy court (Bankr. W.D. Ky. Administrative Manual Section 2.8).

Section 363 Sales

Background/Federal Requirements

After notice and a hearing, the bankruptcy court may approve a section 363 sale of a debtor's assets, other than

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in the ordinary course of business (§ 363(b), Bankruptcy Code). A debtor-in-possession or trustee seeking approval of a section 363 sale must comply with:

- Section 363(b) of the Bankruptcy Code (see Section 363(b) Requirements and Section 363(b)(1)(A) and (B): Sale of PII Requirements).
- Federal Rule of Bankruptcy Procedure 2002 (see Bankruptcy Rule 2002 Notice Requirements).
- Federal Rule of Bankruptcy Procedure 6004 (see Bankruptcy Rule 6004 Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements).
- Section 365 of the Bankruptcy Code to the extent that the sale involves the assumption, assignment, or rejection of any executory contracts or leases (see Section 365 Requirements).
- Any applicable local bankruptcy court rules (see Section 363 Sales: Local Rules).

Debtors-in-possession and trustees have great discretion over the method of conducting the sale and are not required to use any specific sale or bidding procedures (§ 363(b), Bankruptcy Code). However, they must comply with certain procedural requirements under Bankruptcy Rules 2002 and 6004 regardless of the form of sale and any applicable local bankruptcy court rules.

For more information on section 363 sales, see:

- [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview.](#)
- [Timeline of a Section 363 Sale.](#)
- [Article, Strategies for Purchasing and Selling Assets in Chapter 11.](#)

Section 363(b) Requirements

After a notice and a hearing, the trustee (including a debtor-in-possession) may use, sell, or lease property of the estate outside of the ordinary course of business. Therefore, the debtor must provide adequate and reasonable notice of a proposed sale (§ 363(b), Bankruptcy Code and see Bankruptcy Rule 2002 Notice Requirements).

Courts have also held that the sale must:

- Be in the best interests of the estate and its creditors. The debtor generally has a fiduciary duty to obtain the highest or best price for the assets (see *Cello Bag Co., Inc. v. Champion Int'l Corp.* (*In re Atlanta Packaging Prods., Inc.*), 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). To satisfy this requirement, the sale is usually subject to an auction. The highest price is not always the best price,

and it is unnecessary to show that the purchase price was the highest possible price obtainable under the circumstances.

- Be proposed in good faith (see *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 150 (3d Cir. 1986)).
- Have a legitimate business justification (see *Comm. of Equity Sec. Holders v. Lionel Corp.* (*In re Lionel Corp.*), 722 F.2d 1063, 1071 (2d Cir. 1983)).

Section 363(b) sales of all or substantially all of the debtor's assets also require a court to find that the sale is not a *sub rosa* plan (see [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Sales of All or Substantially All Assets](#)). A *sub rosa* plan is a transaction that has the practical effect of predetermining the essential terms of a plan of reorganization.

For more information on section 363 requirements, see [Practice Note, Buying Assets in a Section 363 Bankruptcy Sale: Overview: Legal Requirements](#).

Section 363(b)(1)(A) and (B): Sale of PII Requirements

Because of privacy issues, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) restricted the use, lease, and sale of personally identifiable information (PII). These restrictions do not apply to other forms of estate property.

Specifically, a debtor cannot sell or lease PII outside the ordinary course of business unless either:

- The sale or lease does not violate the debtor's privacy policy. The transfer of PII is allowed if permitted by the debtor's privacy policy and the transfer complies with all the terms of the privacy policy.
- A consumer privacy ombudsman is appointed under section 332 of the Bankruptcy Code and the court approves the sale or lease after:
 - considering the facts, circumstances, and conditions of the sale or lease; and
 - finding that the sale or lease does not violate applicable non-bankruptcy law.

(§ 363(b)(1), Bankruptcy Code.)

For additional requirements for the sale of PII, see Bankruptcy Rule 6004(g): Sale of PII Requirements.

For more information on the sale of PII, see [Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data](#).

Bankruptcy Rule 2002 Notice Requirements

Bankruptcy Rule 2002 sets out notice requirements for section 363 sales regarding:

- **Length and method of notice.** The clerk of the bankruptcy court or another person directed by the court must give parties at least 21 days' notice of the sale by mail, unless the court limits or shortens the time or directs another method of giving notice (Fed. R. Bankr. P. 2002(a)(2)).
- **Content of notice.** The notice must include:
 - the time and place of any public sale;
 - the terms and conditions of any private sale;
 - the time fixed for filing objections; and
 - a general description of the property to be sold. The notice of a proposed sale of PII must state whether the sale is consistent with the debtor's privacy policy (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).

(Fed. R. Bankr. P. 2002(c)(1).)

- **Parties served.** The notice of the sale must be served on:
 - the debtor;
 - the trustee, if any;
 - all creditors;
 - any indenture trustees;
 - any official creditors' committees and equity committees, or their authorized agents;
 - the Securities and Exchange Commission (SEC), if appropriate;
 - the Commodity Futures Trading Commission, in a commodity broker case;
 - the Internal Revenue Service (IRS);
 - the US attorney for the district where the case is pending, if a debt is owed to the US other than for taxes, and on the department, agency, or instrumentality of the US through which the debtor became indebted;
 - the Secretary of the Treasury, if the US has a stock interest;
 - the US Trustee;
 - equity security holders, in sales of all or substantially all assets, unless the court orders otherwise; and
 - entities who have requested notice under Federal Rule of Bankruptcy Procedure 2002.

(Fed. R. Bankr. P. 2002(a)(2), (d), (g), (i), (j), (k).)

- **Additional parties served.** Notice must also be served on:

- the consumer privacy ombudsman, if applicable (§ 332(a), Bankruptcy Code and see Section 363(b)(1)(A) and (B): Sale of PII Requirements and Bankruptcy Rule 6004(g): Sale of PII Requirements);
- all parties to executory contracts or unexpired leases to be assumed and assigned, or rejected as part of the sale (Fed. R. Bankr. P. 6006(c) and see Section 365 Requirements);
- all parties known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in the assets to be sold (Fed. R. Bankr. P. 6004(c) and see Bankruptcy Rule 6004 Requirements);
- the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, if the sale implicates the antitrust laws of the US (§ 363(b)(2), Bankruptcy Code); and
- the Committee on Foreign Investment in the US if the sale implicates the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (for more information on FIRRMA, see [Legal Update, FIRRMA Signed into Law, Expanding Scope of CFIUS Review](#)).

Bankruptcy Rule 6004 Requirements

Bankruptcy Rule 6004 sets out requirements for:

- **Notice.** Notice of a proposed sale of estate property outside of the ordinary course of business must be given consistent with Bankruptcy Rule 2002 (Fed. R. Bankr. P. 6004(a) and see Bankruptcy Rule 2002 Notice Requirements).
- **Objections.** Objections to the proposed sale must be filed and served at least seven days before the date of the sale or within the time fixed by the court (Fed. R. Bankr. P. 6004(b)). An objection gives rise to a contested matter governed by Federal Rule of Bankruptcy Procedure 9014 (Bankruptcy Rule 9014).
- **Sale free and clear of liens.** A sale free and clear of liens or other interests under section 363(f) of the Bankruptcy Code is a contested matter for which a motion must be made under Bankruptcy Rule 9014 and served on the parties who have liens or other interests in the property to be sold (Fed. R. Bankr. P. 6004(c)). The notice must include the date of the sale hearing and the deadline to file and serve objections on the debtor or the trustee. Under Bankruptcy Rule 9014, the motion must be served in the manner provided for service of a summons and complaint by Federal Rule of Bankruptcy Procedure 7004.

- **Hearing.** If a timely objection is made, the hearing date may be set out in the original notice of the sale (Fed. R. Bankr. P. 6004(e)). No hearing is required if there are no objections. If the original sale notice does not contain a hearing date, the objecting party commonly obtains a hearing date and time from the court and states it on the objection.

- **Public or private sale.** The sale may be by private sale or public auction. On the completion of the sale, unless it is impracticable, the trustee or the debtor must file and transmit to the US Trustee an itemized statement of:

- the property sold;
- the name of each purchaser; and
- the price received for each item or lot or for the property as a whole if sold in bulk.

(Fed. R. Bankr. P. 6004(f)(1).)

If an auctioneer sells the property, then the auctioneer must file the statement and provide a copy to the US Trustee and the debtor or the trustee.

- **Execution of instruments.** The debtor or the trustee must execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser (Fed. R. Bankr. P. 6004(f)(2)).
- **Stay of sale order.** Sale orders are stayed for 14 days, unless the court orders otherwise (Fed. R. Bankr. P. 6004(h)). This gives any objecting parties time to seek a further stay while they appeal the sale order. Courts can waive or reduce the 14-day appeal period, on request of the parties, if there is a reason to close the sale early.

Bankruptcy Rule 6004(g): Sale of PII Requirements

A motion to sell PII outside of the terms of the debtor's privacy policy:

- Must include a request for an order directing the US Trustee to appoint a consumer privacy ombudsman under section 332 of the Bankruptcy Code, whom it must appoint at least seven days before the sale hearing.
- Is a contested matter governed by Bankruptcy Rule 9014 and must be transmitted to the US Trustee and served on:
 - any official creditors' and equity committees;
 - the creditors included on the list of the 20 largest creditors filed under Federal Rule of Bankruptcy Procedure 1007(d), if no creditors' committee has

been appointed (see [Standard Document, List of Largest Unsecured Creditors](#)); and

- any other entity that the court may direct.

(Fed. R. Bankr. P. 6004(g)(1).)

If a consumer privacy ombudsman is appointed, then at least seven days before the sale hearing, the US Trustee must file a notice of the appointment, including:

- The name and address of the person appointed.
- A verified statement of that person setting out their connections with:
 - the debtor;
 - creditors;
 - any other party in interest;
 - the respective attorneys and accountants of the above entities;
 - the US Trustee; and
 - any person employed in the office of the US Trustee.

(Fed. R. Bankr. P. 6004(g)(2).)

Section 363(b)(1)(A) and (B) of the Bankruptcy Code contains additional requirements for the sale of PII (see Section 363(b)(1)(A) and (B): Sale of PII Requirements).

For more information on the sale of PII, see [Practice Note, Property of the Estate: Special Intangible Property Interests: Customer Data](#).

Section 365 Requirements

Executory contracts and unexpired leases may be assumed by the debtor and assigned to buyers either as a stand-alone section 363 sale of just contracts and leases or as part of a larger section 363 sale of other assets.

To assume and assign an unexpired lease or executory contract:

- The debtor must cure all defaults, including all non-monetary defaults, or provide adequate assurance that the default will be cured promptly, except for incurable non-monetary breaches of unexpired real property leases and defaults based on breaches of ipso facto provisions (§ 365(b)(1)(A), (2), Bankruptcy Code).
- The debtor must compensate or provide adequate assurance that it will promptly compensate the non-debtor for any actual monetary loss caused by the default (§ 365(b)(1)(B), Bankruptcy Code).

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- The purchaser must provide adequate assurance of future performance, even if there are no defaults (§ 365(f)(2)(B), Bankruptcy Code).

Federal Rule of Bankruptcy Procedure 6006(c) and Bankruptcy Rule 9014 govern the timing and procedure for giving notice of the proposed assumption, assignment, or rejection of a lease or executory contract, including providing notice to the other parties to the lease or contract, as well as to the US Trustee.

For more information on the assignment of executory contracts and unexpired leases, see [Practice Note, Executory Contracts and Leases: Overview: Assignment](#).

Local Rules

The W.D. Ky. does not have any local rules that supplement the requirements of Bankruptcy Rule 6004.

Setting Bar Dates in Chapter 11 Cases

Background/Federal Requirements

A bankruptcy court presiding over a Chapter 11 case must issue an order setting a deadline by which all creditors must file proofs of claim to evidence and preserve a claim against the debtor (Fed. R. Bankr. P. 3003). This deadline is known as a bar date. Both unsecured creditors and secured creditors holding claims against the bankruptcy estate must either be scheduled as creditors by the debtor (with no designation of being disputed, contingent, or unliquidated) or file a proof of claim by the bar date to receive a distribution under a plan of reorganization or a plan of liquidation.

By fixing a bar date, a debtor can begin the process of analyzing creditors' claims and determine how to expeditiously administer and conclude its Chapter 11 case.

The Federal Rules of Bankruptcy Procedure, together with the local rules of the bankruptcy court where the bankruptcy case is filed, dictate the requirements for setting bar dates and providing notice to creditors. Many bankruptcy courts across the country have adopted their own local procedural guidelines for debtors seeking entry of an order setting a bar date. Debtors and their counsel must check the local rules of the bankruptcy court when preparing to request that the court set a bar date. Some local rules permit bar date motions to be decided without a hearing provided notice is given and parties in interest do not request a hearing.

For more information on the purpose of bar dates and the various bar dates in Chapter 11 cases, see [Practice Note, Bar Dates in a Chapter 11 Bankruptcy Case](#).

Local Rules

The W.D. Ky. does not have any local rules pertaining to setting a bar date or regarding bar date notices to mass tort claimants.

Subchapter V of Chapter 11

Background/Federal Requirements

Congress enacted the Small Business Reorganization Act (SBRA), which added a new Subchapter V to Chapter 11 of the Bankruptcy Code (Subchapter V), effective February 19, 2020. Subchapter V provides small businesses with aggregate liabilities of up to \$3,024,725 (or \$7,500,000 under the Bankruptcy Threshold Adjustment and Technical Corrections Act until June 21, 2024) with an opportunity to resolve outstanding liabilities in a streamlined cost-effective Chapter 11 bankruptcy proceeding.

The SBRA amends the definition of small business debtor in section 101(51D) of the Bankruptcy Code, changing the requirements for an individual or entity to qualify as a small business debtor. The amendments to the definition apply to both Subchapter V and small business cases as defined under section 101(51C) of the Bankruptcy Code.

An individual or entity that qualifies as a small business debtor as defined in section 101(51D) may now:

- Elect to proceed under new Subchapter V of Chapter 11 under new section 103(i) of the Bankruptcy Code.
- Elect to proceed as a small business case under the existing small business case provisions and requirements under section 101(51C) of the Bankruptcy Code, which was amended to specifically exclude a Subchapter V case from the definition of small business case.
- File a traditional (non-small business debtor) Chapter 11 case.

In a voluntary Chapter 11 case, the small business debtor must make its election on the bankruptcy petition. (Fed. R. Bankr. P. 1020(a).) In an involuntary Chapter 11 case, the debtor must file a statement with the bankruptcy court within 14 days of entry of the order for relief that it qualifies as a small business debtor and whether it elects to have Subchapter V apply (Fed. R. Bankr. P. 1020(a)). A debtor's Chapter 11 case becomes a small business case or a case

under Subchapter V by virtue of the debtor's election unless and until the bankruptcy court enters a finding that the debtor's designation is not correct (Fed. R. Bankr. P. 1020(a)). Federal Rule of Bankruptcy Procedure 1009 provides that any voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor must give notice of the amendment to the trustee and to any affected entity.

All parties in interest, including the US Trustee, may object to the debtor's small business debtor or Subchapter V designation. However, the objection must be filed no later than 30 days after:

- The conclusion of the section 341 meeting.
- Any amendment to the debtor's designation.

(Fed. R. Bankr. P. 1020(b).)

The local rules of the bankruptcy court where the bankruptcy case is filed may provide specific guidance for Subchapter V cases. For more information on small business bankruptcy, see [Practice Note, Small Business Bankruptcy Under the SBRA: Overview](#).

Local Rules

W.D. Ky. Local Bankruptcy Court Rule 2081-1 does not apply to Subchapter V cases (see Post-Confirmation Requirements: Local Rules). Until a local rule is developed, the clerk's office will enter case notices in each Subchapter V case to guide debtor's counsel in the process for closing.

Unclaimed Funds

Background/Federal Requirements

The treatment of unclaimed property in a bankruptcy case is addressed by section 347 of the Bankruptcy Code. Unclaimed funds arise in bankruptcy cases when distributions to creditors are returned and remain unclaimed. Most unclaimed funds arise when checks to creditors are not cashed. Ownership of unclaimed funds depends on the nature of the bankruptcy proceeding.

In a Chapter 7, 12, or 13 case, the trustee must stop payment on any check that remains unpaid 90 days after final distributions (§ 347(a), Bankruptcy Code). These unclaimed funds are turned over to the court to hold for the creditor's benefit for five years, after which time they escheat to the US Treasury (28 U.S.C. §§ 2041 to 2044).

In a Chapter 9 or 11 case, unclaimed property is typically addressed by the terms of the confirmed plan. Section 347(b)

of the Bankruptcy Code provides a backstop for property that is not addressed by the plan and remains unclaimed at the expiration of the time allowed for distributions. This unclaimed property is either:

- Returned to the debtor or the entity that acquired the debtor's assets under the plan after five years (§ 347(b), Bankruptcy Code).
- In certain circumstances, deposited with the court.

When unclaimed funds are deposited with the bankruptcy court, they can only be released by court order. Motions for the release of unclaimed funds must comply with 28 U.S.C. Section 2042.

For more information on unclaimed funds in bankruptcy cases, see [Practice Note, Unclaimed Property in Bankruptcy](#).

Local Rules

To obtain the release of unclaimed funds, Section 2.5 of the Bankr. W.D. Ky. Administrative Manual provides that a claimant must:

- File a motion to withdraw and disburse funds and a proposed order to the clerk. The motion must be in the form of W.D. Ky. Local Bankruptcy Form K and contain:
 - creditor information, including name, address, telephone number, and identity of the original creditor;
 - assignment information, if applicable; and
 - the identities of any other parties with an interest in the funds.
- Serve the motion to withdraw and disburse funds on the US Attorney for the W.D. Ky.
- Provide proof of the claimant's identity.
- Provide special payment instructions to the clerk, if applicable.

Withdrawal of the Reference

Background/Federal Requirements

General orders of reference issued by a district court enable the district court to automatically refer cases under 28 U.S.C. Section 1334(b) to the bankruptcy court for that district (28 U.S.C. § 157(a)). If there are issues in a case that has been automatically referred to the bankruptcy court that are beyond the scope of the bankruptcy court's expertise, the district court can, on its

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own motion or the motion of a party in interest, withdraw the reference and bring the case back to the district court (28 U.S.C. § 157(d)).

Withdrawal of the reference is either mandatory or discretionary. A party seeking discretionary withdrawal must show cause for that withdrawal. A party seeking mandatory withdrawal must show that the case requires consideration of bankruptcy laws and other federal laws regulating organizations or activities affecting interstate commerce.

For more information on withdrawal of the reference, see [Practice Note, Withdrawal of the Reference](#).

Local Rules

The W.D. Ky. has no local rules regarding withdrawal of the reference.

US Trustee Operating Guidelines and Reporting Requirements

The US Trustee, a representative of the US Department of Justice, oversees the administration of bankruptcy cases and supervises a panel of private bankruptcy trustees for Chapter 11 and Chapter 7 cases (28 U.S.C. § 586(a)). In particular, the US Trustee must extensively monitor a debtor in possession's Chapter 11 estate (see [Practice Note, Property of the Estate: Overview](#)).

The Executive Office for US Trustees in Washington, D.C. supervises the US Trustee Program and provides general policy and legal guidance to US Trustees, as well as substantive and administrative support. There are 21 regional US Trustee offices throughout the US, and each has instituted its own guidelines derived from the policies of the Executive Office for US Trustees as well as the US Trustee's duties listed in the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the US Code. While the guidelines are similar in each region, they

differ in various ways, including the timing for a debtor's compliance and the amount of detailed information required from each debtor.

The US Trustee's office for Region 8 serves the federal bankruptcy courts in the states of:

- Kentucky.
- Tennessee.

This Note discusses the general operating guidelines and procedural requirements enacted by the US Trustee for Region 8 ([Region 8 Guidelines](#)) as they apply to Chapter 11 cases filed in the W.D. Ky.

The following is a summary of the US Trustee Guidelines for Chapter 11 cases filed in the W.D. Ky. Requests for modification of these guidelines must be made in writing and approved in writing by the US Trustee's office.

For more information on the US Trustee's role in Chapter 11 cases and the general US Trustee requirements for Chapter 11 debtors, see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors](#).

First Day Requirements

Once the debtor files its Chapter 11 petition, it immediately owes certain fiduciary duties to the estate. For this reason, US Trustees in nearly all districts across the country have implemented guidelines requiring a Chapter 11 debtor-in-possession to monitor its postpetition activities and preserve the enterprise value for the benefit of the estate.

The following table summarizes the US Trustee guidelines for Chapter 11 cases filed in the W.D. Ky. concerning a debtor's initial Chapter 11 obligations and reporting requirements during the first few days of a case (see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: First Day Duties of the Debtor](#)). Any request for amendment or modification of any of the requirements must be made in writing and approved in writing by the Office of the US Trustee.

US Trustee Operating Requirements

Books and Records

W.D. Ky. Bankruptcy Court Requirements

The debtor must:

- Close its books and records as of the petition date and open new books and records.
- Separately account for prepetition and postpetition accounts receivable and payable in all reporting.

(See [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Bank Accounts](#).)

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US Trustee Operating Requirements	W.D. Ky. Bankruptcy Court Requirements
Bank Accounts	The debtor must: • Close all existing bank accounts as soon as practicable on the filing of the petition and open one or more new debtor-in-possession bank accounts at an authorized depository or, if already banking at an authorized depository, have the bank internally code the account as a debtor-in-possession account. • Use bank signature cards indicating that the debtor-in-possession is a "chapter 11 debtor in possession." • Ensure that all monies of the estate are adequately protected.
Insurance	The debtor must: • Provide the trustee with certificates of insurance showing that each policy of insurance required for the estate is in full force and effect at least seven days before the initial debtor interview. • Ensure that the loss payee or beneficiary reads "[DEBTOR], debtor in possession." • Ensure that the trustee is listed as a party to be notified of any change, cancellation, or expiration of each policy. • Maintain appropriate casualty insurance for all tangible assets subject to casualty loss (for example, fire, theft, weather, and vandalism). • Have general liability insurance and, if appropriate, product liability insurance. • Maintain workers' compensation insurance, if applicable (see Practice Note, Workers' Compensation: Common Questions). • Maintain any other coverage customary in its industry or business (for example, professional liability insurance for a physician or lawyer). (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Insurance.)
Taxes	The debtor must: • Timely file all federal, state, and local tax returns or other required filings when due. • Pay all taxes when they come due. (See Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Taxes.)

Initial Debtor Conference

The US Trustee Program's general guidelines require that an employee of the US Trustee conduct a personal interview with the debtor and the debtor's counsel, commonly referred to as the initial debtor interview (IDI). This IDI:

- Provides the US Trustee with crucial information so that the US Trustee can assess the accuracy of the debtor's

schedules and statements and the debtor's financial ability to confirm a plan.

- Informs the debtor of its new fiduciary and reporting obligations and of the US Trustee's role in the administration of Chapter 11 cases.

(See [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Initial Debtor Interview](#).)

In the W.D. Ky., the debtor and counsel for the debtor must attend an IDI with the US Trustee, usually scheduled before the first date set for the meeting of creditors. The IDI is usually held at the debtor's place of business but may be conducted at the Office of the US Trustee, subject to the US Trustee's discretion. Due to COVID-19, the IDIs are currently being conducted by MS Teams Videoconference.

The debtor must provide the US Trustee with the documents described in the Pre-Initial Debtor Interview Checklist at least seven days before the IDI. Original documents are not to be submitted. These documents typically include:

- Bank account statements for the 12 months before the bankruptcy filing.
- A voided check from each debtor-in-possession (DIP) checking account. There is no longer a requirement that the DIP account displays "Debtor in Possession" or the bankruptcy case number on the face of the checks or account statements.
- The two most recently filed federal income tax returns with all attachments.
- Declaration pages from each insurance policy maintained by the debtor with the US Trustee added as a certificate holder.
- The most recent monthly profit and loss statement:
 - prepared by the debtor; and
 - externally prepared.
- The most recent balance sheet:
 - prepared by the debtor; and
 - externally prepared.
- Cash disbursement ledgers (in .xls or .txt format) for the 12 months before the bankruptcy filing.
- Minutes of any board of directors meetings held in the 12 months before the bankruptcy filing (if any).
- A signed financial account release.
- A signed receipt, certification, and authorization to contact.

Meeting of Creditors

Federal Rule of Bankruptcy Procedure 2003 and sections 341 and 343 of the Bankruptcy Code govern the date, place, and order of section 341 meetings in all districts that have a US Trustee.

For more information on section 341 meetings, see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Section 341 Meeting](#).

Monthly Operating Reports

The debtor-in-possession must file operating reports each month throughout the pendency of the Chapter 11 case. The timely filing of reports of operations is crucial to the efficient administration of Chapter 11 cases. These reports are designed to provide the US Trustee, the court, creditors, and other parties in interest with reliable information concerning the debtor's current financial performance. US Trustees use the information contained in the reports to identify cases lacking a realistic prospect of reorganization and to evaluate the feasibility of a proposed plan of reorganization (see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Monthly Operating Reports](#)).

Effective June 21, 2021, all debtors except those who are small businesses or who under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) elect relief under Subchapter V of Chapter 11 must use [streamlined, data-embedded, uniform forms](#) for filing monthly operating reports, which have been updated effective November 30, 2021. These forms have been updated, effective November 30, 2021 and are due no later than 21 days after the end of the month reported.

Post-Confirmation Operating Reports

After confirmation of a plan, a debtor no longer must file operating reports on a monthly basis. The debtor instead must file a post-confirmation operating report on a fiscal quarterly basis (see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: Post-Confirmation Reports](#)).

In the W.D. Ky., on confirmation of a plan, the debtor's successor, as well as any post-confirmation entities created under the plan, must file quarterly reports until a final decree is entered or the case is converted or dismissed. These reports are due no later than 21 days after the month immediately following the calendar quarter covered by the report.

Effective June 21, 2021, all debtors except those who are small businesses or who under the CARES Act elect relief under Subchapter V of Chapter 11 must use [streamlined, data-embedded, uniform forms](#) for filing post-confirmation reports. These forms have been updated, effective November 30, 2021.

Controlling Interest Reporting

In a Chapter 11 case where the debtor holds a substantial or controlling interest in other entities, the debtor must file a Periodic Report Regarding Value, Operations and Profitability of Entities in Which the Debtor's Estate Holds a Substantial or Controlling Interest (Official Bankruptcy Form B426). This form must be filed under Federal Rule of Bankruptcy Procedure 2015.3, with the first forms filed no later than seven days before the first date set for the section 341 meeting. Subsequent reports must be filed every six months thereafter. The US Trustee consults with the debtor in setting the applicable reporting periods covered by these reports.

Quarterly Fees

Each Chapter 11 debtor is responsible for paying a quarterly fee to the US Trustee Program (28 U.S.C. § 1930(a)(6)). Quarterly fees accrue throughout the course of the Chapter 11 case until the case is:

- Closed.
- Dismissed.
- Converted to another chapter.

The fees are payable on a fiscal quarterly schedule and are paid no later than the last day of the month following the end of each calendar quarter. For example, fees for the first fiscal quarter ending March 31 are due on April 30. Failure to pay quarterly fees may result in the court converting or dismissing the Chapter 11 case (§ 1112(b)(4)(K), Bankruptcy Code). A court cannot confirm a Chapter 11 plan unless the plan provides for payment of all unpaid quarterly fees accrued by the effective date (§ 1129(a)(12), Bankruptcy Code). For more information on the required fees, see [Practice Note, US Trustee Guidelines and Requirements for Chapter 11 Debtors: US Trustee Fee Guidelines](#).

The quarterly fee is calculated by totaling the debtor's total disbursements reported in the monthly operating reports for the three-month calendar quarter and then determining the amount owed based on the US Trustee's quarterly fee schedule. The US Trustee Program amends the quarterly fee schedule from time to time (see [US Trustee Quarterly Fee Guideline Schedule](#)). A minimum fee of \$250 is due even if there are no disbursements made during a calendar quarter. There is no proration of the fee.

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